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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

THE NETHERLANDS: ANTILLES

[11 September 1990]

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Introduction

1. This report is submitted in accordance with article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which entered into force with respect to the Kingdom of the Netherlands on 21 January 1989. The present initial report is submitted in accordance with the general guidelines regarding the form and contents of initial reports which were provisionally adopted by the Committee against Torture at its first session on 20 April 1988. This report will focus on the period from 21 January to 1 September 1989.

Structure of the Kingdom of the Netherlands

2. The present constitutional structure of the Kingdom of the Netherlands dates back to 1954, when, after several years of study, discussion and negotiations, it was decided by the Netherlands, Suriname and the Netherlands Antilles (then including Aruba) to establish a new constitutional order under which they (according to the Charter for the Kingdom, the constitutional document which was promulgated) "will conduct their internal affairs autonomously and in their common interests on a basis of equality and will accord each other reciprocal assistance". Thus the Kingdom, while remaining one sovereign entity under international law, came to consist of three co-equal partners which have distinct identities and are fully autonomous in their internal affairs.

3. Since then, two important changes have taken place. In 1975 Suriname decided - with the full assent of the partners - to leave the Kingdom and become a sovereign State in its own right. In 1986 Aruba became a separate country within the Kingdom, under the Charter, and therefore now has the same constitutional status as the two other countries, the Netherlands and the Netherlands Antilles.

4. The Charter, the highest constitutional instrument of the Kingdom, is a legal document *sui generis*, which is based upon its voluntary acceptance by the three countries. It falls into three essential parts. The first part defines the association between the three countries, which is federal in nature. The fact that together the three countries form one sovereign entity implies that a number of matters need to be administered by the countries together, through the institutions of the Kingdom (wherever possible, the organs of the countries shall participate in the conduct of these affairs). These matters are called Kingdom affairs. They are enumerated in the Charter, and include the maintenance of independence, defence, foreign relations, and the safeguarding of fundamental human rights and freedoms, legal stability and proper administration. The second part deals with the relationship between the countries as autonomous entities. Their partnership implies that the countries respect each other and render one another aid and assistance, materially and otherwise and that they shall consult and co-ordinate in matters which are not Kingdom affairs but in which a reasonable degree of co-ordination is in the interest of the Kingdom as a whole. The third part of the Charter defines the autonomy of the countries, which is the principle underlying the Charter; the countries govern themselves according to their own

wishes, subject only to certain conditions imposed by their being part of the Kingdom. Elementary principles of democratic government, observance of the Charter and Kingdom legislation, and the adequate functioning of the organs of the country are matters of concern to the whole of the realm. Conversely, although Kingdom affairs are matters for the Kingdom as a whole, the countries play active roles in the way they are conducted. In foreign relations, for example, the countries themselves, under the aegis of the Kingdom, deal with matters the substance of which is in their autonomous sphere.

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I. INFORMATION OF A GENERAL NATURE

A. Introduction

5. The Constitution of the Netherlands Antilles contains the same basic human rights and freedoms as the Constitution of the Netherlands. The judiciary, the executive powers and the legislature are governed by the same principles of the Netherlands Constitution. The majority of the rights and freedoms contained in the different Covenants are protected by the Constitution, while others are covered by separate laws.

6. According to article 43 of the Charter the safeguarding of the fundamental human rights and freedoms, legal security and sound Government shall be a Kingdom affair, but the Netherlands Antilles also has an autonomous responsibility for the realization of these rights and freedoms. Before an amendment affecting basic rights is made to the Constitution of the Netherlands Antilles the opinion of the Government must be obtained. A bill containing such an amendment must be submitted to the Government of the Kingdom for its approval (vide art. 44 of the Charter).

7. The independence of the judiciary in the Netherlands Antilles is guaranteed by the Constitution which provides that the judges and the Attorney General of the Court of Appeal shall be appointed by the Queen, who, pursuant to the Charter, is Head of State of the whole Kingdom. The Supreme Court of the Netherlands has power of cassation in the Netherlands Antilles, and exercises this power at the request of parties in the Netherlands Antilles.

8. As a result of the above-mentioned responsibility of the Kingdom for the preservation of the fundamental human rights and freedom, legal security and a sound Government, article 50 of the Charter provides that the Queen as Head of the Kingdom may suspend or annul by decree, stating reasons, any legislation or administration measure in the Netherlands Antilles which conflicts with, inter alia, the Charter, international law or interests. Proposals for annulment are made by the Council of Ministers of the Kingdom. However, this step is only taken if redress has not been obtained within the Netherlands Antilles.

9. The Kingdom of the Netherlands signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 4 February 1984 and the Instrument of ratification was deposited on 21 December 1988. The Convention became effective for all countries of the Kingdom on 1 January 1989. The ratification by the Kingdom of the Netherlands did not require immediate enactment of new legislation in the Netherlands Antilles.

10. It is the intention that the commission assigned by the Government of the Netherlands Antilles in 1985 for the general revision of the Criminal Code and the Criminal Code of Procedure starts with the revision of the Criminal Code as soon as the Bill for the total revision of the Criminal Code of Procedure has been approved by the Parliament of the Netherlands Antilles. In this general revision the aforementioned commission will consider the necessity of incorporating a special article dealing with the offence of torture in the new Criminal Code.

11. Netherlands Antillean law contains provisions which make acts prohibited under the Convention punishable as offences. For this reason the Government of the Netherlands Antilles feels that in order to fulfil obligations under the Convention it is not necessary at this point to make a separate act to deal with torture as an offence. More detailed reference to the aforementioned relevant provisions is made under the comments on article 4.

12. Upon ratification the Kingdom of the Netherlands recognized the competence of the Committee against Torture to receive and consider communications from a State Party that claims that another State Party is not fulfilling its obligations under the Covenant, as well as communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.

B. General legal framework

13. The basic provision relating to the protection from torture and other cruel, inhuman or degrading treatment or punishment is to be found in article 3 of the Constitution of the Netherlands Antilles. That article provides that "Everyone in the territory of the Netherlands Antilles shall have an equal right to the protection of person (and property)". This right cannot be restricted by law. As a result of this article aliens in the Netherlands Antilles have the same status as citizens of the Netherlands Antilles with regard to the protection of person (and property).

14. The term torture or cruel, inhuman or degrading treatment or punishment is not employed in the legislation of the Netherlands Antilles. However, the general provisions of the Criminal Code of the Netherlands Antilles are applicable also to acts which fall under the scope of article 1, paragraph 1 of the Convention.

15. In addition to these provisions of a basic and general nature, there are also provisions of a certain relevance, inter alia, the Principles on Prison System Act and the Prison Act. Pursuant to these Acts persons in detention should be treated in such as way as to avoid the harmful effects of the deprivation of liberty, and convicted prisoners should be treated with respect to human dignity.

C. Other treaty commitments

16. In addition to this Covenant the following treaties, inter alia, are in force in the Netherlands Antilles: the International Covenant on Civil and Political Rights and the Optional Protocol to the Covenant, the European Convention on Human Rights, the Sixth Additional Protocol to the European Covenant concerning the Abolition of the Death Penalty and the European Convention on the prevention of Torture and Inhuman or Degrading Treatment or Punishment.

D. Incorporation

17. In the Netherlands Antilles most of the provisions regarding material rights set out in several Covenants according to article 2, paragraph 2 of the Constitution of the Netherlands Antilles are directly applicable in view of their content and wording and can be applied by the Courts in the Netherlands Antilles without any requirement of legislation.

18. Articles 93 and 94 of the Netherlands Constitution, which allow appropriate treaty provisions to have direct legal consequences for individuals and allow them even to prevail over conflicting legislation, also apply to the Netherlands Antilles on the basis of articles 5 and 24 of the Charter for the Kingdom of the Netherlands.

E. Authorities having jurisdiction and remedies

19. Certain fundamental rights may only be restricted by a law passed by the Government (the Governor and Council of Ministers) and the Parliament of the Netherlands Antilles. This means that the administration of the five island territories of the Netherlands Antilles is not empowered to impose such restrictions. As an organ of the Government of the Netherlands Antilles, the Governor may annul any regulation by an island territory administration which restricts the individual in the exercise of his basic rights. If the Governor does not annul such a regulation, any individual may institute legal proceedings, whereupon the Court may declare the regulation inoperative becuase it conflicts with an overriding provision (e.g. of a Covenant, the Constitution, or a Law or Governor's decree).

20. As an organ of the Kingdom, the Governor may propose that the Queen as Head of State of the Kingdom, suspends or annuls any administrative measure enacted by the Government of the Netherlands Antilles which contains provisions violating human rights and freedoms. Thus, if in his opinion an administrative measure is in violation of an overriding provision and should be suspended or annulled, he will not enact it.

21. The Courts in the Netherlands Antilles may scrutinize any Government conduct and even legislation in order to ensure that it is in accordance with the Covenant. Recourse to the Courts in the Netherlands Antilles in connection with human rights matters is guaranteed by the Constitution and by the laws and statutory instruments enacted thereto. Thus, even if the Governor does not propose that the Queen suspend or annul an administrative measure enacted by the Government of the Netherlands Antilles, the Court may declare the measure inoperative at the request of any person who the measure unlawfully restricts in the exercise of one's basic rights.

22. The Governor may propose that the Queen suspends or annuls laws which contain provisions violating the provisions of the Covenant, in the same way as for administrative measures. Any legislation of the Netherlands Antilles which contains such provisions can also be examined by the Courts in the light of the Covenant and declared inoperative.

II. INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

Article 2

23. In accordance with the Constitution of the Netherlands Antilles (art. 3) everyone within the territory of the Netherlands Antilles shall have equal rights to the protection of person. This protection also applies to aliens residing in the Netherlands Antilles. The legislative measures taken to prevent acts of torture primarily concern the criminalization of all kinds of torture. The relevant provisions of the Criminal Code are referred to under the comments on article 4 below. The aforementioned protection is absolute and cannot be limited by law.

24. Rules on interrogation of suspects of criminal offences are given in the Code of Criminal Procedure of the Netherlands Antilles and also in specific instructions to the police forces. For the treatment of prisoners, rules are given in the Principles of the Prison System Act (Verordening Beginselen Gevangeniswezen P.B. 1930 No. 73) and the Prison Act (Gevangenis Besluit, P.B. 1931 No. 19, gewijzigde tekst P.B. 1958 No. 18).

25. The prohibition of torture in the Criminal Code of the Netherlands Antilles applies in all situations. According to the Criminal Code, superior orders cannot lead to acquittal of the accused. The person who has given the unlawful order will himself be considered as an accomplice in the criminal act.

Article 3

26. According to article 5 of the Constitution of the Netherlands Antilles rules on the admission, residence and expulsion of Dutch citizens and aliens must be established in law. Restrictions on freedom in these respects can therefore only be imposed by law. The full text of the rules concerning admission, residence and expulsion is contained in the Admission and Expulsion Act. In 1988 the Government of the Netherlands Antilles appointed a commission for a general revision of the Admission and Expulsion Act.

27. Extradition of aliens according to article 4 of the Constitution of the Netherlands Antilles is only possible pursuant to a treaty. The Extradition Act of the Netherlands Antilles contains rules concerning the inclusion of extradition treaties. According to the text of both the Constitution of the Netherlands Antilles and aforementioned Act only aliens can be extradited, this only pursuant to a treaty. On the other hand, extradition cannot take place in cases of political crimes or other circumstances related to political crimes.

Article 4

28. As mentioned earlier, acts of torture as described in the Convention are dealt with in the Criminal Code of the Netherlands Antilles. The provisions particularly relating to torture within the meaning of article 1 of the Convention provided they are committed for any of the reasons mentioned there, are: articles 248 and 249 (concerning sexual abuse); articles 287-299 (concerning crimes against a person's liberty, slavery, kidnapping, assault and battery and unlawful coercion); articles 300-322 (concerning unlawful threat, the infliction of bodily injury or causing death).

29. The aforementioned offences are punishable with penaltiies of up to life imprisonment or imprisonment of 20 years, depending on the gravity of the offence. An attempt to commit torture or complicity or participation in acts of torture are covered by the aforementioned provisions.

30. The Netherlands Antilles is party to the European Convention against torture and other cruel, inhuman or degrading treatment or punishment; the 1964 Convention on Genocide and the Geneva Convention of 1949 and the Additional Protocols thereto.

Article 5

31. The following articles of the Criminal Code of the Netherlands Antilles are relevant to the subject of criminal jurisdiction as referred to in article 5 of the Convention:

(a) Article 2: Netherlands Antillean criminal law shall be applicable to any person who commits a criminal offence in the Netherlands.

(b) Article 3: Netherlands Antillean criminal law shall be applicable to any person who commits a criminal offence outside the Netherlands on board of a Netherlands Antillean ship or aircraft.

(c) Article 5 paragraph 1 (2): Netherlands Antillean criminal law shall be applicable to any Netherlands Antillean resident who perpetrates an act outside the Netherlands Antilles deemed under Netherlands Antillean criminal law to be an indictable offence and which also constitutes a criminal offence in the country in which it is committed.

32. The question of the establishment of universal jurisdiction over the criminal offence of torture (in order to implement the second paragraph of Art. 5) will be dealt with by the Commission assigned by the Government of the Netherlands Antilles in 1985 for the general revision of the Criminal Code and the Criminal Code of Procedure.

Article 6

33. The rules of the Criminal Code of Procedure of the Netherlands Antilles are applicable to offences referred to in article 4 falling within the jurisdiction of the Courts of the Netherlands Antilles. By a Court's decision a suspect can be detained or other actions can be taken to ensure his presence, providing the normal conditions applying to such measures are fulfilled.

34. According to the Extradition Act of the Netherlands Antilles (Nederlands-Antilliaanse Uitleveringsbesluit P.B. 1926, No. 61) these measures may also be taken in connection with extradition, even before a petition for extradition has been submitted.

35. Pursuant to article 71 of the Criminal Code of Procedure, a preliminary investigation shall take place as soon as there is cause to believe that an offence falling in the domain of public prosecution has been committed.

36. In case of an offence with respect to which extradition may take place, the Attorney-General shall, pursuant to the 1926 Extradition Act of the

Netherlands Antilles, undertake the necessary investigation following submission of a petition of extradition. At an earlier stage of the extradition process, when another State has requested coercive measures with respect to a suspect, a preliminary investigation of the facts is made following a Court order to that effect.

37. Since 16 January 1986, the Netherlands Antilles has been a party to the Vienna Convention on Consular Relations. In accordance with the aforementioned Convention the competent authorities of a State party shall inform the relevant consular post if a national of another State is detained, if he so requests.

Article 7

38. The Criminal Code and the Criminal Code of Procedure contain provisions in order to allow the authorities of the Netherlands Antilles to take measures to prosecute in cases of criminal offences which fall within the jurisdiction of the Courts in the Netherlands Antilles. Cases referred to in paragraph 1 of article 7 shall therefore be submitted to these authorities for the purpose of prosecution, if the persons concerned are not being extradited.

39. Pursuant to paragraph 2 of article 7, the competent authorities will decide in the same manner as in the case of any offence of a serious nature. The law and practice of the Netherlands Antilles are in conformity with this provision.

40. A person against whom proceedings are taken in case of an offence as referred to in article 4 is treated in the same way as other offenders and will consequently be guaranteed fair treatment by the general provisions on legal proceedings in criminal cases.

Article 8

41. This article concerns obligations relating to extradition for the offences referred to in the Convention. Pursuant to paragraph 1 all offences shall be deemed extraditable. Referring to comments made under article 4, the provisions in the Netherlands Antilles relating to penalties for acts of torture are mainly to be found in articles 248, 249 and 287 to 322 of the Criminal Code of the Netherlands Antilles.

42. Extradition, as mentioned earlier, is regulated by the Extradition Act of the Netherlands Antilles and is only possible pursuant to a treaty. The Netherlands Antilles is party to the different Conventions concerning extradition of aliens, inter alia, the Convention on Extradition of Criminals between the United Kingdom of Great Britain, Ireland and the Kingdom of the Netherlands and the Convention on Extradition between the United States of America and the Kingdom of the Netherlands.

43. Article 2 of the Extradition Act specifies certain conditions for offences with respect to which extradition is requested; they must be punishable under the law of the Netherlands Antilles by more than one year's imprisonment; if a person has been convicted, the penalty must not be less than four month's imprisonment. If extradition is requested for several offences, it is sufficient if one of the offences satisfies these requirements.

44. Torture normally comes under those offences whose scales of penalties, as laid down in the Criminal Code, are sufficient to satisfy the requirements of the Netherlands-Antillean Extradition Act and which are thus extraditable under Netherlands Antillean laws. According to the extradition Act of the Netherlands Antilles, extradition can be refused if an offence has a political nature. Pursuant to the different Conventions to which the Netherlands Antilles is a party the right is reserved to refuse extradition if the offender risks persecution which is directed against his life or health or on humanitarian grounds. Such impediments are considered by both the Court of Justice and the Government of the Netherlands Antilles.

Article 9

45. The Netherlands Antilles grants a great deal of assistance, in connection with criminal proceedings, to other States. In general, assistance can be given to a foreign State irrespective of whether an agreement on judicial assistance has been concluded with that State or not. Pursuant to the Extradition Act of the Netherlands Antilles the Netherlands Antillean Court of Justice may, at the request of the authorities of a foreign State, take various measures necessary for the preliminary investigation or trial in the foreign State, e.g. hearing the parties and procuring evidence objects and other evidence may be seized and delivered to a State if there is any reason to assume that they are of significance to the criminal investigation taking place there.

46. The Netherlands Antilles is party to the different Conventions on mutual judicial assistance in criminal matters, inter alia, the Convention between Belgium, Luxembourg and the Kingdom of the Netherlands concerning the extradition of criminals and the Convention between the United States of America and the Kingdom of the Netherlands on mutual assistance in criminal matters.

47. In the Bill concerning the total revision of the Criminal Code of Procedure, which has been submitted to the Parliament of the Netherlands Antilles for approval, a new part concerning international judicial assistance has been incorporated. In this part the grounds for refusal of a request for judicial assistance are increased and a special regulation for a hearing by foreign police officers is inserted.

Article 10

48. Education in constitutional and human rights, including information regarding the prohibition of torture is part of the training and education of police officers, prison personnel and military officers in the Netherlands Antilles. In the education of medical personnel and employees of the social services it is emphasized that the patients/clients shall be treated well and with respect for their human rights.

49. As mentioned earlier, torture is not prohibited as such by the Constitution of the Netherlands Antilles nor by the Criminal Code of the Netherlands Antilles, but the acts covered by article 1 of the Convention are already criminal offences under the law of the Netherlands Antilles and as a result thereof, applicable to police officers, prison personnel, medical personnel, public officials, etc.

Article 11

50. Interrogation of suspects and others is regulated in the Criminal Code of Procedure. An interrogation shall be carried out as soon as possible to prevent anyone indicated as a suspect from being exposed to unnecessary suspicion or inconvenience. General instructions on how to perform interrogations are given to the police in the Criminal Code of Procedure. Promises, false information, threats or force must not be used.

Articles 12 and 13

51. Pursuant to the Criminal Code of Procedure of the Netherlands Antilles, a preliminary investigation shall be initiated as soon as there are causes to believe that an offence has been committed. The preliminary investigation can be initiated by the police or the public prosecutor (see articles 32 and 34 of the aforementioned Criminal Code of Procedure). In 1985, the Government of the Netherlands Antilles assigned a special commission to the investigation of cases brought against police officers.

52. According to the Criminal Code of Procedure the public prosecutor has the responsibility for all criminal investigation, including the investigations of the aforementioned special commission. As mentioned earlier torture committed for any reason is a criminal act under the Criminal Code of the Netherlands Antilles, and all allegations of torture are subsequently investigated by or under the responsibility of the prosecuting authorities.

Article 14

53. Both the Civil Code (i.e. articles 1382-1397d, for damages caused to others) and the Criminal Code of Procedure (articles 189-193, for damages caused by the offender) of the Netherlands Antilles contain provisions with regard to compensation and damages that ensure that the victim of an act of torture obtains redress. In the event of death of the victim of an act of torture can claim damages directly from the Government of the Netherlands Antilles or from an Island Government if that act has been committed by one of the aforementioned government officials.

Article 15

54. The Criminal Code of Procedure of the Netherlands Antilles does contain (articles 301-307) rules for the judgement of evidence. According to article 93 of the Criminal Code of Procedure improper measures for the purpose of extracting a confession or statement are not allowed and confessions or statements given as a result of improper measures may not be considered by the Court. It is the general opinion both in legal practice and doctrine that the Court shall not use or give any weight to evidence illegally obtained.

Article 16

55. Reference should be made to the comments with regard to article 4. Concerning remedies to obtain redress or ensure that action is taken against perpetrators of such acts, see the comments under article 13. As mentioned earlier improper measures for the purpose of extracting a confession or a statement are not permitted.

56. Prison staff must comply with the Principles of the Prison System Act, the Prison Act and other instructions concerning the treatment of detained persons and pursuant to which a detained person shall be treated in such a way as to counteract the detrimental effect of deprivation of liberty.

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

THE NETHERLANDS: ARUBA 1/

[13 September 1990]

1. In the framework of the request made to the delegate of Aruba by the Chairman of the Committee against Torture during the consideration of the initial report of Aruba to provide some more information on the initial report, the following explanation is given.

2. Reference is made to the speech to the Committee against Torture on 25 April 1990 of the delegate of Aruba, Mr. E.S. Morales, 2/ in which the constitutional structure of the Kingdom of the Netherlands is set out and in particular the constitutional position of Aruba within the Kingdom. The Kingdom of the Netherlands consists of three equal parts: The Netherlands, the Netherlands Antilles and Aruba, each fully autonomous but without the capacity to enter into agreements and treaties on their own. This can only be done by the Kingdom, being a subject of international law, as a whole. However, although a treaty can only be concluded (signed, ratified) by the Kingdom, each of the three Governments can negotiate treaties for the Kingdom. Treaties concluded by the Kingdom are only applicable if the respective Governments of the Kingdom have explicitly and independently accepted.

3. This brief explanation on the constitutional structure of the Kingdom and the particular capacity of the Kingdom, as a subject of international law, in concluding treaties is in reply to questions by the members of the Committee on this subject. It can be said that the constitutional structure of the Kingdom, in matters of foreign affairs, is characterized by a double-step system. The first step is an internal matter, namely whether one or more parts within the Kingdom want to enter into international relations with other countries. If one or more parts of the Kingdom express the will to do so, it

is the Kingdom - and this is the second step and relates to the external aspect - which exercises its constitutional external power to bind that part/country within the Kingdom to an international agreement.

4. With regard to the absence of an article in the legal system of Aruba, which explicitly prohibits acts of torture, it can be said that from the tenor of various Aruban Laws and Regulations this prohibition can be inferred, as is stated in the initial report of Aruba in paragraphs 83, 91, 96 and 97. 3/ As a result of the evaluation of the contents of the first report the Department of Constitutional and Legal Affairs of Aruba has taken into consideration a proposal, at the request of the Minister of Justice, to introduce a separate law on the prohibition of torture and other cruel inhuman or degrading treatment or punishment. This recommendation is now being discussed among officials of the said Department and the Office of Foreign Affairs. This initiative will also take into consideration the establishment of universal jurisdiction over the criminal offence of torture. The Committee will be kept informed of any developments with regard to the adoption of new legislation on these issues.

5. In paragraph 84 3/ of the initial report, reference is made to the introduction of a revised Criminal Procedure Act. A copy of the relevant articles, of the Penal Code and the Criminal Procedure Act will be forwarded to the Committee in order to facilitate the evaluation of the articles in these Acts relevant to the prohibition of torture.

6. As mentioned in paragraph 86, 3/ of the report "As most complaints about torture would be against policemen in the execution of their duties ..., police ordinances were introduced". These ordinances form a very important part, together with the draft Criminal Procedure Act, of the legal system in which protection is given to the human being to protect him from any kind of torture. The relevant articles of the Acts mentioned on page 35 of the initial report will be forwarded in order to give a clear vision of the tight system of competence attributed to policemen.

Conclusion

7. The fact that many articles incorporated in different National Ordinances and other Regulations cover the particular issue of the prohibition of torture, is the main reason why the Government of Aruba at first considered that there was no need to introduce new articles in the Constitution or in other national regulations. However, after the discussion with the Committee the Government of Aruba is now considering the adoption of new legislation as mentioned above.

Notes

1/ The present document contains additional information regarding Aruba which had been requested by the Committee against Torture at the end of the consideration of the initial report of the Netherlands (CAT/C/9/Add.1) at its 46th and 47th meetings on 25 April 1990. (See CAT/C/SR.46 and 47).

2/ See CAT/C/SR.46, paras. 76-78.

3/ See CAT/C/9/Add.1, Part II.

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Initial reports of States parties due in 1990

Addendum

FINLAND

[28 September 1990]

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PART I: INFORMATION OF A GENERAL NATURE

A. Introduction

1. The Government of Finland signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 4 February 1985 and the Finnish instrument of ratification was deposited on 30 August 1989. The Convention entered into force with respect to Finland on 29 September 1989, as announced in the Finnish Treaty Series no. 60 of 1989.

2. Upon ratification, Finland recognized the competence of the Committee against Torture to receive and consider communications where a State party claims that another State party is not fulfilling its obligations under the Convention, as well as communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention.

3. This report is submitted in accordance with Article 19 of the Convention and general guidelines regarding the form and contents of initial reports which were adopted by the Committee against Torture at its third session in November 1989.

4. While preparing this report, the Ministry for Foreign Affairs has requested opinions from the following: the Ministry of Justice, the Ministry of Education, the Ministry of Defence, the Ministry of the Interior, the Ministry of Social Affairs and Health, the Ministry of Labour, the National Board of Health, the National Board of Social Welfare, the General Staff of the Armed Forces, the Prison Department, the National Research Institute of Legal Policy, the Church Welfare Service (criminal section), the Conscripts' Association, Amnesty International Finnish Section, the League for Human Rights and Freedom, the Human Rights Lawyers and the Parliamentary Ombudsman.

B. General legal framework

5. The Constitution Act of Finland, being adopted as early as in 1919, does not explicitly prohibit torture or other cruel, inhuman or degrading treatment or punishment. It is, however, provided therein that every Finnish citizen shall by law be guaranteed protection in respect of life, honour, personal freedom and property. This is interpreted to comprise also protection of physical integrity.

6. Section 93 of the Constitution Act stipulates that whosoever has suffered an infringement of his rights or been injured through the unlawful act or omission by an official or an authority, shall be entitled to demand the official or authority to be punished and obligated to pay damages or brought before a court of justice.

7. Chapter 21 of the Finnish Penal Code (491/69) includes provisions on offences against life and health (see Annex I). In most cases the kind of torture referred to in the Convention comprises assault mentioned in Chapter 21 to the Penal Code. The applicable provision would generally be Chapter 21, Section 6, according to which the maximum penalty for aggravated assault and battery is 10 years' imprisonment.

8. Chapter 25 of the Penal Code contains provisions of offences against liberty (see Annex I). Under Section 11 of that Chapter whosoever tortures another person in order to obtain a confession in any matter shall be punished.

9. The Convention only deals with torture perpetrated by an official or a public authority which, in addition, constitutes an offence in office. Only offences committed by a civil servant of the State of Finland or the employee of a public authority are defined as offences in office. These are covered under Chapter 40 of the Penal Code (792/1989) (see Annex I). Furthermore, Section 20, paragraph 3 of the Civil Servants Act (755/1986) stipulates that civil servants shall behave in a manner befitting their official position.

10. The supervision of civil servants and the system of extraordinary appeal on procedural errors help ascertain that officials and authorities comply with the law and do not exceed their powers.

11. In connection with the ratification of the Convention, the scope of application of the Finnish Penal Code was extended through an amendment of Chapter 1, Section 3 (665/1989), so as to render any offence punishable under the Convention also punishable under the Finnish Penal Code.

C. Other treaty commitments

12. Finland is party, inter alia, to the International Covenant on Civil and Political Rights and its Optional Protocol, the 1949 Geneva Conventions and the two additional Protocols of 1977, European Convention for the protection of Human Rights and Fundamental Freedoms and Sixth Additional Protocol to the said Convention concerning the Abolition of the Death Penalty. Finland has also signed the Second Optional Protocol to the Covenant as well as to the European Convention of the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. A Government Bill (no. 71/1990) concerning acceptance of the matter was given to Parliament in May 1990. The European Convention on Torture and the Second Optional Protocol to the Covenant will be ratified soon.

D. Relationship between the Convention and national legislation

13. As mentioned above in paragraph B, the Convention entered into force in Finland by means of an act. This means that the substantive provisions of the Convention are in force as internal law. Thus a specific act to bring the Convention into force in respect of Finland has made it an integral part of Finnish legislation to be complied with by the authorities and applied in their practice. The contents of the most important provisions in the Convention have, furthermore, been incorporated in certain other laws.

14. In its Report No. 1 of 19 May 1989, the Legal Affairs Committee of Parliament "specifically drew attention to the introduction of the Convention as a Bill as having an impact on its international applicability". The Committee emphasized that after the Convention has been incorporated into our legal order, both the judical and administrative authorities are bound to apply it in accordance with the principle lex posteriori.

E. Judicial authorities

15. Since the offences referred to in the Convention are punishable under the Finnish Penal Code, the sentences are to be pronounced by the courts of law. The pre-trial investigation is carried out by the police.

16. The Chancellor of Justice and the Parliamentary Ombudsman are both independent authorities exercising control of the legality of administrative decisions in Finland. According to Section 46 of the Constitution Act of Finland, the Chancellor of Justice must ensure that authorities and officials comply with the law and perform their duties, so that no person shall suffer infringement of his rights. The Directive of the Parliamentary Ombudsman (2/1990) defines the modalities of the legality control exercised by the Ombudsman.

17. A Bill (727/90) has been submitted to parliament with the intent of extending the powers of the Chancellor of Justice and the Parliamentary Ombudsman, so that the highest legality control would unambiguously include the supervision of all public acts and omissions. The purpose of the Bill is to further improve the legal protection of citizens. It is intended to enter into force as soon as possible and contains, inter alia, a division of tasks between the Chancellor of Justice under the Council of State and the Parliamentary Ombudsman. If the Bill is passed, the supervision of the deprivation of liberty and internment of persons against their will more clearly than under the current provisions fall within the scope of the tasks of the Parliamentary Ombudsman.

F. Remedies

18. Section 93 of the Constitution Act provides as follows: "Every official is responsible for measures directly or indirectly taken by him in his capacity as member of a collegiate public office. Whosoever suffers a violation of his right, or injury as a result of an unlawful act or omission by an official, may demand redress and damages or take legal action against the official in question in accordance with the procedure prescribed in the law." The provision in question also applies to cases where an official is guilty of torture or other cruel, inhuman or degrading treatment or punishment. The victim or his legal successor may in the capacity of the injured party initiate legal proceedings even in the event that the public prosecutor decides not to press charges. The injured party may also demand damages to be paid.

19. The legality control imposed on civil servants together with the administrative appeals system are intended to safeguard the respect of the rights of the individual. Both the Chancellor of Justice and the Parliamentary Ombudsman have the right to initiate legal proceedings at their own initiative in matters falling within the scope of their competence, but in practice the vast majority of cases - totalling an annual of 10,000 to 15,000 - emanate from appeals by individuals. In addition to the two aforementioned authorities, such cases are dealt with by ministries, central boards and provincial governments. The administrative branches where appeals are most frequent are the prison and police departments. In 1989, 1,511 and 1,160 denouncements or appeals were made to the Parliamentary Ombudsman and the Chancellor of Justice respectively. Some further statistics are provided on the number of appeals made to the Parliamentary Ombudsman and the Chancellor of Justice between 1985 and 1989.

1. Statistical data

Number of appeals, denouncements and applications, including petition in respect of police procedure, treated by the Chancellor of Justice between 1985 and 1989.

	Appeals, etc.	Petitions in respect of police procedure
1985	1 553	246
1986	1 462	233
1987	1 450	235
1988	1 239	215
1989	1 160	180

2. Number of appeals and applications addressed to and treated by or initiatives taken by the Parliamentary Ombudsman, with a separate column for petitions in respect of police procedure for each, between 1985 and 1989

	Appeals	Petitions in respect of police procedure	Initiatives by Ombudsman	Petitions in respect of police procedure
1985	1 399	173	47	3
1986	1 557	204	44	11
1987	1 704	204	29	3
1988	1 540	239	24	3
1989	1 511	247	24	2

20. According to Section 1 of the Directive of the Parliamentary Ombudsman (2/1929), the Ombudsman shall take appropriate measures against a judge or other officials guilty of fraud, partiality or gross negligence, or who has violated the legal rights of an individual citizen, or exceeded his powers. The Parliamentary Ombudsman has the right to press charges or authorize someone to do so where he sees that an official has committed an offence.

G. General conclusions

21. Torture in the sense referred to in the Convention has not been found to exist in Finland. The Finnish legal system nevertheless provides ample possibilities for the victims of such offences, should they take place, to be investigated.

22. Under Finnish law cruel, inhuman or degrading treatment or punishment as referred to in article 16 of the Convention are prohibited. If committed by an official, they are punishable at least under Chapter 40 of the Penal Code as offences in office. Persons who claim to be the victims of such offences have the same legal remedies as the victims of torture.

23. According to the National Research Institute of Legal Policy, Finnish judicial statistics do not contain a separate heading for unlawful acts committed by officials as referred to in the Convention. Court statistics do none the less contain data of "confessions under duress" (Penal Code

Chapter 25, Section 11; see Annex I). These provisions, however, do not apply solely to acts perpetrated by officials. Statistics of the past few years reveal very few cases of this category, and since the entry into force of the Convention, none at all have appeared in court statistics.

24. As judicial statistics do not indicate the occurrence of any unlawful acts of this type, the National Research Institute of Legal Policy has examined the possible occurrence of torture of comparable inhuman treatment in the light of allegations made occurring in newspapers, at trials, and in data compiled through criminological research. The Institute's impression is that torture and comparable inhuman treatment on the part of officials, if it occurs at all, is extremely rare in Finland.

25. In addition to actual torture, the Convention covers cruel, inhuman or degrading treatment or punishment by officials as referred to in article 16. In respect of the occurrence of cruel and inhuman acts the same applies as for torture explained above, whereas what is felt as degradation is almost inevitable to a certain extent in closed institutions or other situations where the authorities have powers over those subjected to their treatment. Misdemeanors/offences including various kinds of humiliating or otherwise improper behaviour have occurred in the training of recruits to the armed force.

26. In 1989 the Parliamentary Ombudsman took up the issue of televised monitoring of patients in psychiatric hospitals (Niuvanniemi), with reference to the prohibition of degrading treatment to be found in international human instruments. The Ombudsman came to the conclusion that such monitoring was not without problems. Consequently, the introduction of televised monitoring should not depend on the decision of the chief physician of the hospital alone, but the principles and acceptability of such monitoring should be discussed on a national level.

27. The Parliamentary Ombudsman has also drawn particular attention to acts referred to in Article 16 of the Convention. According to the Ombudsman, treatment raising questions under this heading may possibly occur in Finland too. Even though torture or other cruel or inhuman treatment or punishment by officials is not a current problem in Finland, the Ombudsman points out that it is particularly important that alertness to this aspect be maintained while developing relevant laws and practices.

PART II: INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

Article 2

28. Section B above (General legal framework) dealt with the constitutional provisions and those in the Penal Code prohibiting torture. The present part covers other legislative, administrative and judicial measures to prevent torture in Finland.

29. Section 24 of the Pre-Trial Investigation Act (449/87) prohibits inappropriate means of interrogation and stipulates that the examinee is to be treated in a calm and objective manner. The examinee shall not be subjected to deliberately fraudulent statements, promises or threats, coercion or exhaustion or other inappropriate means or procedures which impair the

faculties of decision, will, memory or judgement in order to obtain confession or lead a statement in a given direction. Interrogations shall not without special reason be held after 21.00 or before 6.00 hours. The examinee must be given sufficient rest and regular meals (see Annex III).

30. Finnish law does not contain any provisions allowing torture or other treatment referred to in the Convention under special circumstances. According to Section 1 of the State of War Act currently in force (303/30), the President of the Republic may, if defence of the nation or maintenance of legal order so require, declare the nation or part of it to be in state of war. The Act contains a list of rights which in state of war may with special reason be restricted. No provision may be construed to allow torture or any other treatment referred to in the Convention. A Bill for a new Act on State of War ("State of Defence Act (249/89)) has been submitted to Parliament with the intention of repealing the aforementioned State of War Act. The government proposal accompanying the Bill specifically explains that the aim is to safeguard the basic rights of individual citizens even in circumstances where special powers must be exercised in armed conflicts. This aim means that war-time restrictions shall be as few as possible and remain within the limits set by the Constitution and international agreements concluded by Finland.

31. An order by a superior or an official cannot be construed under Finnish legal practice to justify torture.

32. According to Section 2 of the Penal Custody Decree (134/86), the Director and certain officials of the institution shall direct and supervise the treatment of prisoners and the activities or other institutions under the Prison Department. Thus they have the duty to ascertain that acts prohibited in the Convention do not occur in these institutions. During the period examined, no torture or other cruel, inhuman or degrading treatment or punishment had occurred.

33. For the remaining part see under Article 11.

Article 3

34. According to Article 3, no State party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Section 8 of the Aliens Act (400/83) provides grounds for refusal of entry at the frontier. The expression "return" in the Convention includes refusal at the frontier. The provisions of aforementioned Section 8, determining when a person can be denied entry at the frontier, do not refer to any need of assessing the consequences of the refusal to the person in question. Section 18 of the Aliens Act provides grounds for deportation; according to its subsection 3, a refugee shall not be deported to an area where his life or freedom will be threatened on account of his race, religion, nationality, social class or political opinion. Subsection 4 provides that when considering deportation, all relevant facts and circumstances shall be taken into account as a whole. Such relevancies can be deemed to include the conditions the deportee would be sent to endure. The Aliens Act does not, however, contain any provisions specifically prohibiting deportation to a State where the person in question would be in danger of being subjected to torture.

35. The Government Bill (47/90) proposing inter alia amendments to the provisions on deportation and refusal at the frontier was submitted to Parliament in June 1990. The Bill proposes the inclusion of the "non-refoulement" principle in Article 30 stating that no one shall be returned to a territory where he is likely to be subjected to inhuman treatment or persecution, or when he is likely to be sent to such territory. The new Aliens Act is expected to enter into force earliest in 1991.

36. As regards the treatment of aliens and in particular the extradition of aliens, it may be noted that this question has been under consideration by the Human Rights Committee established under the International Covenant on Civil and Political Rights (Communication No. 291/1988). The author complained that his extradition was in violation of Article 7 of the Convention since there were reasons to believe that he would be subjected to torture in his home country. The Committee found, however, that the author "had not sufficiently substantiated his fears that he would be subjected to torture in Spain".

37. Section 7 of the Extradition Act (456/1970) provides that a request for extradition shall not be granted if there is reason to believe that the person whose extradition has been requested will run the risk of persecution because of his race, nationality, religion, political opinion or membership of a certain community, or because of political conditions.

38. In this context, there can also be reference to a case which occurred in the summer of 1990, when a citizen of the Soviet Union hijacked an aircraft which landed in Helsinki. To justify his action, the hijacker claimed that he was subjected to torture in his home country and therefore requested asylum in Finland. On the request of the Soviet Union he was later extradited. Reference was made by Finnish lawyers to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Finnish Government, while extraditing the hijacker, submitted a note to the Soviet Union according to which Finland will follow the further examination of the matter by the authorities in the Soviet Union. It has been agreed between the two countries that a Finnish psychiatrist will participate in a medical examination to be made. Moreover, Finnish lawyers are allowed to be present as observers in trials.

Article 4

39. The Convention provides that each State party shall ensure that all acts of torture are offences under its criminal law.

40. As to torture regulated by the Penal Code, reference is made to the information given under heading B (General legal framework) and Annex I of this report.

41. Departing from the general rule, inflicting pain may be determined as assault under Chapter 21, Section 5, subsection 2 of the Penal Code, which applies to victims who, on account of age, handicap or comparable grounds, or otherwise defenceless in the circumstances, justifiably fear for their life or health. Although in 1975 the inclusion of a specific subsection had been considered, the present wording is such that it is deemed to cover those situations.

42. A person tortured by officials, or with the consent of officials, is clearly defenceless. In such circumstances the victim's life or health are clearly in danger. The provisions thus cover a significant number of the acts of torture referred to in Article 1 of the Convention.

43. According to Article 4 of the Convention, attempt, complicity or participation in acts of torture shall be offences under criminal law. Under the Finnish Penal Code instigation to and complicity in a crime are generally punishable, whereas an attempted crime is punishable only where specifically stated. Thus the attempt at aggravated assault is criminal, whereas assault, extracting a confession under duress, unlawful detention, coercion and unlawful threats constitute crimes only as accomplished acts. In the context of ratifying the Convention, Finland amended Chapter 21, Section 5, of its Penal Code in order to criminalize attempted assault.

44. A prison official who is found guilty of improper treatment of prisoners may be punished under Section 60 of the Penal Custody Decree (134/86), according to which disciplinary measures may be taken against a prison official in respect of an offence in office or omission or improper behaviour in or outside office if the matter is not to be taken to a court of justice, or if admonition by the prison direction or prison department is not considered sufficient.

Article 5

45. According to Article 5, each State party shall take such measures as may be necessary to establish its jurisdiction over the offences of torture. Chapter 1 of the Penal Code (320/63 and 665/89) includes provisions concerning the territorial application of Finnish criminal law. Finnish law is in all circumstances applicable to crimes committed in Finland. A Finnish national and an alien permanently residing in Finland can also, according to Chapter 1, Section 2 of the Penal Code, always be sentenced under Finnish law in respect of offences committed outside Finland. According to Chapter 1, Section 3, subsection 2 (a), the offences referred to in Article 4 of the Convention are punishable under Finnish law irrespective of the place of perpetration or the nationality of the perpetrator or the victim. Upon ratification of the Convention, the Finnish Code was amended to ensure compliance with the obligations under Article 5 of the Convention.

46. Chapter 1 of the Penal Code contains inter alia the following provisions relating to the applicability of Finnish law:

(a) Section 1: whosoever has committed an offence in Finland shall be sentenced under Finnish law.

(b) Section 2: a Finnish citizen and an alien permanently residing in Finland shall be sentenced under Finnish law for an offence committed outside Finland also.

(c) Section 3: Finnish law shall apply in respect of any offence committed by a non-resident alien outside Finland aboard a Finnish ship or aircraft or against Finland, a Finnish national, a Finnish collective body, establishment or foundation or an alien permanently residing in Finland as well as in respect of any other criminal act committed outside Finland provided that the act is considered criminal under the law of the place of perpetration.

47. The provisions of subparagraph (a) above notwithstanding, Finnish law is applicable even in respect of offences committed by an alien where the offence is not punishable if it constitutes:

(a) A war crime or violation of human rights, genocide or conspiracy to commit genocide;

(b) Procuration;

(c) Assault, aggravated assault or attempt thereof or any other offence which by virtue of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations on 10 July 1984 is deemed torture;

(d) An offence referred to in Chapter 25, Sections 1 (a) or 9 (a):

(e) Air piracy (hijacking) or illegal assumption of control of an aircraft, sabotage or obstruction of air traffic; or

(f) A monetary offence.

Article 6

48. According to Article 6, any State Party in whose territory a person alleged to have committed any offence referred to in Article 4 is present, can on certain conditions take this person into custody or take other legal measures to ensure his presence.

49. As mentioned in connection with Article 5, the scope of application of the Finnish Penal Code has been extended, so that the acts referred to in Article 4 of the Convention are under all circumstances punishable in Finland. The provisions of the Coercive Criminal Investigations Means Act (450/87) as amended by Act (361/90), are therefore also applicable to such offences. Section 3 of the said Act (see Annex II) stipulates the prerequisites for arresting a person justifiably suspected of an offence. In view of the penalties laid down for the offences referred to in Article 4, it is an offence for which Section 3 allows a pre-trial arrest.

50. The Extradition Act (456/70) applies to persons in respect of whom a request for extradition has been made. According to Section 19 of the said Act, a police officer authorized to make an arrest may take the requested person into custody in order to further the investigation and secure the surrender.

51. In respect of the obligations under Article 6, paragraph 2, the provisions are the same as those under the Pre-Trial Investigation Act.

52. Finland is party to the Vienna Convention on Consular Relations. According to Article 36 of that Convention, the consular representatives of a State whose national has been provisionally arrested in another State have the right, at the request of the arrested person, to be informed of the arrest and afforded the opportunity to enter freely into contact with the arrested person and safeguard his interests. Finland, furthermore, has concluded bilateral consular agreements with Poland, Romania, the Soviet Union and Hungary. These agreements include the obligation to inform the other party of the arrest of any national of that party.

Article 7

53. In respect of a person suspected, charged or sentenced for an offence in a foreign State, the primary measure under the Extradition Act is extradition. However, if no request for extradition has been made, or if extradition for legally founded reasons cannot be effected, the person may be brought up for trial in Finland in respect of an offence which under the provisions of Article 5 falls within Finnish jurisdiction.

54. Finnish legislation and legal practice are in compliance with the provisions of Article 7, paragraph 2. Cases are treated under the same criminal and procedural provisions as other offences of similar seriousness.

Article 8

55. The extradition of offenders from Finland is governed by the Extradition Act (465/70), the Nordic Extradition Act (270/60) and the European Extradition Convention, the Second Additional Protocol to the latter, and bilateral extradition treaties between Finland and several other countries.

56. Finland has extradition treaties with the following countries: Australia, Belgium, Canada, Ireland, Kenya, New Zealand, Sri Lanka, Uganda, the United Kingdom and the United States of America.

57. An act of torture normally corresponds to the definition of an offence of which the maximum penalty is at least the minimum condition for extradition. In contemplating extradition, the provisions of Article 8 of the Convention, which is in force as internal law in Finland, are considered.

58. According to Section 5 of the Extradition Act, an act deemed to be a military offence is not extraditable. But if the act comprises an extraditable offence, such as torture, extradition can be granted. According to Section 6 of the same Act, political offences are not extraditable. However, if the political offence comprises or is closely connected with a non-political offence, or the act on the whole cannot be regarded as political, extradition can be granted. Torture can never be deemed a political offence.

59. Article 8, paragraph 2, of the Convention is not relevant in Finland, as Finland does not make extradition conditional on the existence of an extradition treaty.

Article 9

60. Finnish authorities will execute letters rogatory or other measures relating to a criminal matter at the request of the authorities of another State only if an agreement to that effect has been concluded between the Government of Finland and the Government of the requesting State (Act on Letters Rogatory and the Procuring of Evidence for the Authorities of a Foreign State and on Mutual Assistance in Criminal Matters, 52/25).

61. Finnish law has no provision on whether the service of writs in criminal matters is to be effected at the request of the authorities of a State which Finland has no agreement on mutual assistance in criminal matters. The

Ministry for Foreign Affairs has, in fact, effected service of writs requested by such States, but the juridical status is not clear. It has, for example, been deemed that a request to summon a respondent should generally be refused.

62. Finland is party to the European Convention on Mutual Assistance in Criminal Matters of 1959, to the Agreement between Denmark, Finland, Iceland, Norway and Sweden on Mutual Assistance in Legal Affairs concerning Service and the Procuring of Evidence as well as to the bilateral treaties with the German Democratic Republic, Hungary, Poland and the Soviet Union.

Article 10

63. According to Article 10, each State Party shall ensure that education and information regarding the prohibition of torture are fully included in the training of public officials, civil and military personnel, etc.

64. In Finland the provisions governing the proper treatment of persons, which naturally include the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, are in part included in the legislation and in part in the directive and other rules and regulations governing and distributed to groups referred to in Article 10 of the Convention. Efforts are made to make the dissemination regarding such laws, rules and regulations as effective as possible.

65. The basic training of policemen contains a wide-ranging section on law during which human rights, fundamental civil and other rights and the police competence with respect to such rights, as well as the entire Penal Code, of which Chapter 25, Section 11, contains a general prohibition of and sanction relative to torture, are thoroughly discussed. Furthermore, the rules pertaining to preliminary investigations, including the Pre-Trial Investigation Act, Section 24, prohibiting all inappropriate means of interrogation, constitute part of the training.

66. The training of prison officials includes becoming acquainted with the Universal Declaration of Human Rights, the United Nations Standard Minimum Rules for the Treatment of Offenders and the Council of Europe Prison Rules. Both the basic vocational training and the on-job continued education of prison staff stress that prisoners must be treated fairly and with respect for their human dignity.

67. According to Section 31 of the Penal Custody Decree (134/86), every member of the staff of any prison shall at all times treat the prisoners fairly and with respect for their human dignity, and behave with propriety and restraint. Section 5 of the Penal Custody Decree stipulates that prisoners shall be treated fairly and with respect for their human dignity. There shall be no differentiations as regards prisoners on account of their race, colour, sex, language, nationality, moral conviction, social position, danger or comparable reason.

68. Under Section 10 of the Transport of Prisoners Decree (165/54), the transport of prisoners shall be arranged so as not to attract undue public attention. Section 3 of the Prison Transport Directive stipulates that prisoners shall be treated fairly and with respect for their human dignity.

69. As to means of interrogation, reference is made to the information given under Article 2 of this report.

Article 11

70. Under Article 11 each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction.

71. The Prison Department of the Ministry of Justice keeps under review the appropriateness and necessity of any rules and regulations it has issued. For the remainder, the systematic review is carried out by the Police Department and Aliens Centre under the Ministry of the Interior, the Ministry of Defence, the Ministry of Social Affairs and Health, the National Board of Social Welfare and the National Board of Health.

Article 12

72. Under Article 12 each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable grounds to believe that an act of torture has been committed in any territory under its jurisdiction.

73. Under Article 14 of the Police Act (86/66), a policeman shall report any offence brought to his knowledge to his superior for any possible action to be taken. If the offence is a minor violation of individual rights and the victim does not make any claims on account of it, the policeman may omit to report it, or the superior, if it has been brought before him, may omit to take any action against the offender if it manifestly appears that the offence has under the circumstances been committed out of forgiveable negligence, thoughtlessness or ignorance, and public interest does not require any measures to be taken. An act of torture can never be considered a minor offence. Furthermore, omitting judicial pursuit presupposes that the involved person makes no claims.

74. According to Section 1, subsection 2, of the Police Decree, when the police official has come to know or has reasonable grounds to believe that an offence has been committed, he shall proceed to investigate the case and bring charges against the offender. A "complainant offence" shall be investigated only if the complainant presses charges. Offences referred to in Article 16, if manifestly minor, constitute complainant offences.

75. According to Section 16 of the Pre-Trial Investigation Act, the official in charge of inquiries or any other investigator in the case shall be disqualified if he is in the service of or the superior in service of the complainant or any other person who specifically stands to gain or lose by the settlement of the case. This provision ensures that an impartial investigation take place notwithstanding that the police official may be guilty of an offence referred to in the Convention.

76. Alleged or suspected acts of torture in prisons are submitted to the police for investigation. During the reporting period no cases or situations were submitted which would have given rise to measures under Article 12.

77. In 1989 the Ministry of the Interior established a committee to examine and make recommendations on the investigation of offences involving the alleged wrongful action by the police of possible offence in office committed by a policeman. The committee, whose official name is the Committee on Police Offences, submitted its report on 8 June 1990.

78. The Committee proposed the establishment of an independent investigatory body to examine any wrongful action by the police. The investigatory body could be chaired by a jurist, for example a judge, and the members by a barrister, a person chosen by the Police Delegation and a policeman who would be in charge of investigatory measures requiring special investigatory skills. The proposed arrangement would require certain additions and amendments to the Pre-Trial Investigation Act and the Coercive Criminal Investigation Means Act, as well as to some regulations governing the office of the public prosecutor.

79. In accordance with Section 7 of the Cause of Death Act (459/73), the police shall investigate the cause of death, inter alia when death has resulted from crime. A physician performing a post-mortem medical examination is under obligation to report any indication of crime to the police. The National Board of Health has issued a general directive according to which the cause of death of any person deceased under special circumstances, such as during military service, apprehension, custody on account of intoxication, arrest, imprisonment or involuntary institutionalization, shall generally be reported to the police and established by a forensic post-mortem medical examination.

80. Under Section 27 of the Pre-Trial Investigation Act (49/87) and Chapter 17 of the Code of Judicial Procedure, a physician may be obliged to testify in a trial or a pre-trial investigation on a secret issue without the consent of the patient if the maximum penalty for the offence under investigation is no less than six years.

81. The abuses of office against a subordinate as referred to in Section 45 of the Penal Code are military offences and are dealt with under military trials. Such offences shall be reported to the commander of the military unit, the police or the competent prosecutor. According to Section 28 of the Military Disciplinary Procedure Act (1259/88), any offence brought to the knowledge of the military discipline officer or, whenever there is otherwise reasonable grounds to believe that an offence has been committed, the officer shall promptly ensure that an investigation be carried out. Should the matter so require, it may be submitted to the police or a special investigation commission.

82. Annually 10 to 20 alleged abuses of office against subordinates are reported. The cases are investigated in accordance with the aforementioned procedure and, if necessary, submitted to the police.

83. According to Section 1 of the directives of the Parliamentary Ombudsman, the Ombudsman is to ensure that judges and the civil service as a whole apply the law and comply with the instructions and directives issued to authorities. According to Section 7, any written appeal pertaining to an act or omission by a judge or other official, submitted to the Parliamentary Ombudsman and supported with evidence, shall be investigated or pursued

before a tribunal by the Ombudsman or a person authorized to that end by the Ombudsman. According to Section 10, moreover, the Ombudsman shall periodically conduct reviews or inspections to familiarize himself with the scope of his official duties. Especially prisons, penitentiaries and comparable institutions as well as accounts of treatment and other matters relative to their inmates are essential in this respect. Similarly, the various units of the defence forces and the treatment of recruits shall be subject to inspection. According to Section 11 of the directive, the Parliamentary Ombudsman has sole decision-making power in all matters subject to his jurisdiction.

Article 13

84. Under Article 13 of the Convention any individual who alleges that he has been subjected to torture has the right to complain to the competent authority and have his case promptly and impartially examined. The complainant and witnesses shall be protected against ill-treatment or intimidation as a consequence of the complaint or any evidence given.

85. Under Section 93 of the Constitution Act, anyone whose rights have been violated or who has suffered injury resulting from an act or omission by a civil servant shall be entitled to demand that the civil servant in question be ordered to pay damages or prosecuted. Anyone who alleges he has been subjected to torture or other cruel or degrading treatment or punishment, or any other form of inappropriate treatment by an official, may address an appeal to the superior of that official, a general appeals authority, the Chancellor of Justice, or the Parliamentary Ombudsman, who will investigate the matter as required, will rule on it and, if appropriate, order action to be taken against the official. For example, appeals relative to acts or omissions by prison officials are addressed to the prison department of the Ministry of Justice.

86. Under Section 9 of the Enforcement of Sentences Decree, a prisoner's correspondence may be subject to inspection, but letters may not be read unless necessary for the prevention of an offence. Any correspondence addressed to the President of the Republic, the Ministry of Justice, the Ministry of the Interior, the Chancellor of Justice, the Parliamentary Ombudsman or the provincial government shall be forwarded unopened.

87. Under Chapter 17, Section 34, of the Code of Judicial Procedure a witness can be heard in a non-public hearing as provided for in the Public Trials Act (945/1984). If a tribunal deems that a witness in the presence of a party out of fear or for some other reason does not disclose what he knows of the matter, or if the party in question disrupts or misleads the witness when testifying, the witness shall be heard without the presence of the party in question.

Article 14

88. Under the Damages Act (412/74) and the Victim Compensation Act (935/73) the victim of an act of torture can obtain redress as laid down in Article 14 of the Convention.

89. Under Chapter 1, Section 1, the Damages Act, whosoever deliberately or through negligence causes damage to another shall provide compensation. Under Chapter 3, Section 1, the State, municipality and any other public authority or institution shall be liable for damage caused by an act or omission by its employee or any person acting under its authority in an activity not regarded as exercise of the sovereign power. Under Section 2 of the same Chapter, a public authority or other body which by virtue of a law, decree or authorization incorporated in the law, assumes a public office, is liable for damage caused in the exercise of the sovereign power if reasonable requirements in so doing have not been met.

90. Under Chapter 4, Section 32, a public official is liable for damage caused to a third party through his act or omission on the grounds specified in Section 1 of the same Chapter.

91. According to Chapter 5, Section 1, damages include compensation for injury to person and property. If the injury has been caused by a punishable act or in the exercise of the public power, or if there are other weighty grounds, the damages shall include compensations for economic loss which is not directly related to the injury.

92. Damages under the Victim Compensation Act are generally payable only in respect of offences committed in Finland. It is one of the most comprehensive Acts in this field in the world. It covers all personal injury arising from any offence. Persons suffering from such personal injury have the right to compensation for medical expenses and other related expenses, disability, loss of maintenance, and any articles of clothing or, e.g. glasses damaged in connection with the injury. The employer of an injured person has the right to compensation for any wages paid while the victim is disabled.

93. Property damage caused by an institutionalized person, as well as property damage that imposes exceptional hardship are also covered by the Act.

94. Indemnification is also payable under the Sickness Insurance Act (364/1963).

95. Finland is party to several international human rights conventions in pursuance of which supervisory bodies have been established to monitor any violation of their provisions. Any order by such supervisory body to the Finnish State in respect of damages would be regarded as binding on Finland. The obligation to pay damages may also derive from an international agreement.

Article 15

96. Pursuant to Article 15, each State party is committed to ensuring that any statement which is established to have been made as a result of torture shall not be invoked as evidence in legal proceedings.

97. The Finnish system is based on free presentation and consideration of evidence. Provisions on the taking of evidence for legal proceedings are contained in Chapter 17 of the Code of Judicial Procedure.

98. Under Chapter 17, Section 2, of the Code of Judicial Procedure, the court shall upon minute examination of all evidence and facts decide what shall be deemed the truth.

99. The Finnish Government has deemed at the time of the signature of the Convention that Article 15 does not require legislative amendments in Finland since the free assessment of evidence, the oral and direct presentation of evidence, and judicial practice fulfil the condition therein. The Government proposal accompanying the Bill to adopt the Convention (36/89) points out that should any statement be claimed as obtained by torture, the tribunal could nearly without exception promptly verify the matter with the person who has given the contested statement. In such case the person in question could, free of any outside pressure, reveal the truth. Should this for any reason not be possible, the general principles governing the assessment of evidence would in any event prevent the consideration of evidence obtained by torture.

100. The Pre-Trial Investigation Act contains some provisions which prevent the afore-mentioned type of evidence from arising. According to Section 30 of the Act, at the request of the examinee a reliable witness, who meets the impartiality requirements of Chapter 17, Section 43, of the Code of Judicial Procedure shall be present at any interrogation. The investigator may request the presence of such witness at his own initiative. An interrogation may be held despite the request of the examinee only if a delay of the interrogation would jeopardize the investigation. A person under 18 years of age shall never be interrogated without the presence of a witness. The examinee shall prior to the interrogation be informed of his right to request the presence of a witness.

101. Some of the reports received expressed the desirability of an inclusion in the Finnish Code of Judicial Procedure of a clause explicitly prohibiting the admissibility of any statement obtained as a result of torture.

Article 16

102. The statement given above with respect to Articles 10, 11, 12 and 13 are also applicable to other cruel, inhuman or degrading treatment or punishment as referred to in Article 16 of the Convention.

103. The provisions of the Penal Code also apply to acts referred to in Article 16. Such acts can usually be interpreted as constituting one or more of the following offences: assaults (Chapter 21), offences against liberty (Chapter 25), defamation of character and violation of privacy (Chapter 27) (see Annex I).

104. Any other cruel, inhuman or degrading treatment or punishment by an official is also punishable as constituting an offence in office referred to in Chapter 40 of the Penal Code.

105. Persons who claim to be victims of such offences have the same channels of redress as the victims of torture.

106. Specifically it should be noted that an amendment of the Penal Code entered into force on 1 May 1990, whereby Section 13 of Chapter 2 was repealed, having provided until that date a person condemned to life imprisonment could, for a new offence, be sentenced to solitary confinement for a maximum duration of four years.

107. According to the Dangerous Recidivists Act (303/71), persons guilty of repeated violent offences such as murder, aggravated assault, robbery or rape with aggravated violence may be sentenced to incarceration for an indeterminate period. If the offender continues to present an evident and serious danger to the life or health of other persons, the Prison Board can determine that the offender will stay in preventive detention. The Prison Board reviews the case at least once every six months. At the beginning of 1989, 13 prisoners were being held in preventive detention.

108. The conditions for solitary confinement were regulated in detail by an amendment of the Enforcement of Sentences Decree in 1987 (Chapter 3, Section 9 (128/87)).

109. A prisoner may, according to this Decree, if necessary be separated from other prisoners to prevent danger to the life or health of others, an imminent attempt to escape, the continued use of an intoxicant by a prisoner or the continuation of an offence involving an intoxicant or to prevent any similar jeopardizing of prison order if the afore-mentioned acts cannot be prevented by other means. Any decision involving the separation of a prisoner from others shall be taken by the warden in co-operation with the prison physician. The rights of a prisoner thus isolated shall not be restricted in any other manner than what necessarily follows from the isolation. The necessity of isolation shall be reconsidered at regular intervals of no more than one month.

110. According to the Military Disciplinary Procedure Act (331/83), a conscript may be sanctioned to military confinement (close arrest) in a disciplinary procedure. This is the most severe type of disciplinary punishment and the maximum length of arrest is 15 days and nights.

111. In Communication No. 265/1987 submitted to the Human Rights Committee by a conscript sanctioned with military confinement, the Committee was of the view that the communication disclosed a violation of Article 9, paragraph 4 of the International Covenant on Civil and Political Rights, since the author had been unable to challenge his detention before a court.

112. The Military Disciplinary Procedure Act was amended in 1989 (374/90). According to this amended Act, a conscript shall have the right to have a decision on military confinement examined by court.

113. The provisions concerning compulsory detention to mental hospitals are found in the Mental Illness Act (187/52), amended 521/77.

114. The use of compulsory detention in hospital has decreased since the adoption of the 1977 Act. Before the 1877 Act the rate of patients treated involuntarily was as high as 304 per 100,000 inhabitants in a one-day census. Since then the number has diminished by 82 per cent till 1986. In 1980, the rate was 124, in 1983 77, in 1984 74, in 1985 67, and in 1986 55 per 100,000 inhabitants.

115. As early as in the 1970s, the principle had been accepted in Finnish law and practice that the rights of a person who has been deprived of his liberty may be curtailed only to the extent necessary for the fulfilment of the purpose of the said detention. Force may be employed against a person

admitted involuntarily to a mental hospital only to the extent that it is necessary for the treatment of his illness or for necessary protection of his own security or that of other persons (Mental Illness Act 187/52, Section 37, amended 521/88). The Act on the Special Care of the Mentally Retarded (519/77) contains a similar provision in Section 42.

116. Some additional information is given concerning patients in mental hospitals and the number of cases where a mental patient has been isolated in a single room:

1985	1986	1987
80	84	64

117. The total number of patients in mental hospitals was:

1985	1986	1987
14 530	13 641	13 009

118. A Bill for a new Mental Illness Act has been submitted to Parliament. It clarifies the grounds for imposed treatment or involuntary institutionalization and improves the patient's legal position by developing the appeals procedure.

119. The Welfare for Intoxicant Abusers Act (41/86) is another provision under which imposed treatment or involuntary institutionalization can be considered. The National Board of Health has issued a general directive (No. 1908) and an operational directive (12/86) on the practical application of this Act on health care.

120. The Contagious Diseases Act (583/86) contains provisions concerning compulsory health measures. In Finland HIV infection or AIDS has not been classified as a contagious disease dangerous to public health, which would authorize coercive measures.

Annexes */

1. Extract from the Penal Code of Finland.

2. Extract from the Coercive Criminal Investigation Means Act (450/1987 as amended by Act 361/1990).

3. Pre-Trial Investigation Act (30 April 1987/449).

4. Matti Joutsen, The Criminal Justice System of Finland - a General Introduction, Ministry of Justice, Finland, Helsinki, 1990.

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*/ These documents, as received in English from the Government of Finland, are available for consultation in the files of the United Nations Centre for Human Rights.